IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

NELSON VARGAS CORDERO
MARY J. RODRIGUEZ QUINONES

DEBTORS

CASE NO 98-10612-ESL

CHAPTER 13

IN RE:

NELSON VARGAS CORDERO
MARY J. RODRIGUEZ QUINONES

PLAINTIFFS

Vs.

COOPERATIVA DE AHORRO Y CREDITO NUESTRA SENORA DE LA CANDELARIA;
JOHN DOE and JANE ROE;
X,Y, AND/OR Z INS. COS.

DEFENDANTS

ADV. NO.: 11-00151

VIOLATION OF DISCHARGE
INJUNCTIVE RELIEF /
CONTEMPT/DAMAGES

JOSE CARRION MORALES
CHAPTER 13 TRUSTEE/PARTY IN INTEREST
CASE # 11-02484

PLAINTIFFS' REPLY IN SUPPORT OF SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY

TO THE HONORABLE COURT:

COME NOW, THE PLAINTIFFS in the above-captioned proceeding, acting through counsel and in support of Plaintiffs' Motion for Summary Judgment (Dkt. 42, the "Motion"), very respectfully file this reply to Defedant's Opposition to Summary Judgment filed at docket 55 (the "Opposition"), Plaintiffs plead and pray as follows:

1. Defendant's Opposition to Plaintiff's Motion on the issue of discharge violation liability rests on several very faulty premises, to wit: 1) it fails to address the standard for "willful violation" or "willfulness" applicable in this District, 2) it rests on an affidavit purporting to support a "computer did it" defense that is discredited and a non-starter, 3) both affidavits filed in support are mere "hearsay" allegations by parties who are not in the best position to allege or claim anything in defense of the allegations in the Complaint, and 4) it fails to address the list of material, uncontested facts set forth in the Motion that form the *gravamen* for the Complaint. In fact, the second affidavit by Lcdo Nazario Maldonado has an actual admission of fact concerning actual notice of the discharge given by Debtors, at a state court hearing, to an attorney for the Defendant that directly supports Plaintiffs' plea for relief on their claims of discharge violation.
2. It may suffice for summary judgment to be entered for Plaintiffs, the legal fact that CandelCoop "stipulates facts 1 through 14" set forth by Plaintiffs as part of their Motion for Summary Judgment." (Opposition at pp. 2, section II) The stipulation is in reference to statements of material facts filed by Plaintiffs in support of the Motion at dockets 40 and/or 41, or both, since these are the only papers containing "facts" numbered 1 – 14. The Plaintiffs gracefully acknowledge the Defendant's candid admission of the core, material facts constituting the willful violation which, at law, should be sufficient to enter judgment for Plaintiffs.
3. As to the remainder of the Opposition, CandelCoop cite cases on "willfulness" standards inapplicable in this Court from other jurisdictions that, frankly, do not begin to address the facts of this case. CandelCoop also misinterprets the standard for awarding sanctions for contempt for discharge violations. In the First Circuit, "a variety of somewhat passive

acts are potentially violations of the discharge injunction if they are objectively coercive or [have are] coercive in effect". *See In re Curtis,* 539 B.R. 356, *5 (1st Cir BAP 2007) (unpublished opinion) *citing, In re Pratt,* 462 F.3d 14, at 20 (1st Cir. 2006). Thus, the standard for imposing contempt sanctions is finding the commission of an act to collect that was "objectively coercive" in itself or had a "coercive effect" to obligate the Debtors to pay; there is no need to find any evidence of bad faith in the creditor's actions to collect. In re *Pratt*, supra at 19. In this case, the evidence is abundant and the facts are 'stipulated' that CandelCoop carried-on with its collection action even in the face of defenses and documents showing the claim was discharged.

4. As for "willfulness", in this Court, once the plaintiff establishes there was notice of the discharge and a voluntary act to collect by the Defendant, it can be said that liability under the "willfulness" standard is nearly automatic; almost *per se*. "The standard for a willful violation of the discharge injunction under § 524(a)(2) is met if the defendant had knowledge of the discharge injunction and the same intended the actions which constituted the violation." *See In re Laboy*, 2010 WL 427780, *6 (Bankr. D. P.R. Feb. 2010) (Lamoutte, Bankruptcy Judge) (unreported opinion; citations omitted). "The defendant must have actual or constructive knowledge of the discharged debt for the knowledge requirement to be satisfied." *Id., citing Torres v. Chase Bank U.S.A., N.A. (In re Torres*), 367 B.R. 478, 490 (Bankr.S.D.N.Y.2007).

5. The Statement filed by CandelCoop of its supervisor in the name of Mr. Pedro Ramos Lorenzana (the "Ramos Statement"), merely amounts to a "computer did it" defense. See also, Opposition, pars 3-6. The Ramos Statement is also unreliable hearsay since it purports to speak for and detail a purported business record made by an employee who was dismissed, coincidentally enough, just before this case was re-opened, Mr. Joel

Collazo. Id.; (Ramos Statement, par. 5)

6. As for the "computer did it" defense attempted by CandelCoop that it changed its systems, that apparently the old cases were not included, or not properly coded or not introduced in the accounting for collections purposes (see Opposition at par 3-6), "[t]hat defense is a nonstarter in this Court's judgment since intelligent beings still control the computer and could have altered the programming appropriately." *See In re McCormack*, 203 B.R. 521, 524 (Bankr. D.N.H 1996); *In re Rijos*, 263 B.R. 382, 392 (1st Cir BAP 2001) If keeping track of Debtors' 1998 case and discharge of the claim proved so difficult in the Defendant's new computer system, we note that CandelCoop's "employees were not precluded from getting a quill pen and ledger book to keep track of the effects of a chapter 13 plan in progress if indeed it was beyond the powers of mortal men and women to re-program their computer." *McCormack, supra* at f/n 2.

7. CandelCoop admits that it had knowledge of the fact that up to the time of the violation in question, Debtors had filed three cases: 98-10612, 08-06559 and 09-06871. (Opposition pp. 2) CandelCoop admits that its files contain evidence of the 09-06871 case, but allegedly didn't dig deep enough to find the instant 1998 case. The Court may take notice that the only case in which CandelCoop was made a creditor-party, where it filed a claim, and in which the claim under review was actually discharged, was the 1998 case subject of this proceeding. In the 2008 and the 2009 cases, CandelCoop was not even listed as a creditor, for one simple reason, because the claim had been discharged in the 1998 case. Neither did CandelCoop partake in the 2008 or 2009 cases.

8. Thus, there is no basis for Defendants tepid insinuation that this Court should take notice of those other filings to somehow excuse CandelCoop or to conclude that the Defendant

was 'dazed and confused' as to which case had the claim been discharged. Such an implication is nonsense, because if the Defendant has actually checked the Court's CM/ECF system with the Debtor's name as it claims to have done in a statement under penalty of perjury, it had to, by force, have found all three cases listed in the same results page. Thus, CandelCoop could have corroborated, as it later did upon Debtor's complaints in state court (Opposition pp. 5, par 9), that the claim was discharged in the 1998 case and that Defendant was never made a party to or notified of, the latter two cases. Therefore, so much for CandelCoop's theory of confusion and computer did it defenses. (**See Debtors' attachment**: CM/ECF search results for Mr. Nelson Vargas Cordero; Creditor Matrix for the 2008 and 2009 cases; (notice CandelCoop is not included))

9. As admitted by CandelCoop's state court attorney, Lcdo. Nazario Maldonado (the "Nazario Statement"), in the November 2010 hearing on the collection action, the Debtor appeared and raised the discharge defense and in fact "showed a document" to CandelCoop's substitute attorney, Lcdo. Reinaldo Diaz. (Nazario Statement at par 6) Thus, the Nazario Statement is equally hearsay in its most material elements, but constitutes an admission as to notice and opportunity to withdraw the violation without need for this legal action. Certainly it was not Debtor's obligation to provide any copies or to visit an adversary's counsel or do their work for them, in the face of a flagrant violation. CandelCoop's substitute counsel could have just as easily taken a pen and a piece of paper and written down the case number or any other pertinent information in the Debtor's document. In fact, the Debtors had showed the same discharge order to the process server for CandelCoop prior to attending court, a fact that CandelCoop

conveniently omits. Whatever the nature of CandelCoop's alleged confusion, the Debtors clearly and unambiguously raised the discharge defenses directly to CandelCoop, showed documentary evidence of the same to its attorney in front of a judge in a court of law, and prior to bringing this action, they were again served with process in an amended suit for the same claim.

10. The bottom line is that CandelCoop's Opposition is rife with excuses of could'of, would'of, should'of, pointless and immaterial allegations based on hearsay, and admissions of facts material to the liability issue, such as notice of the discharge and fair warnings by Debtors before bringing this proceeding. The material uncontested facts set forth in Debtors' Complaint and Motion concerning, 1) Defendant's notice of the 1998 bankruptcy case, 2) CandelCoop's participation in that bankruptcy case, 3) entry of discharge order of the claim, and 4) notice to CandelCoop of the discharge order, remain uncontested. In fact, the Opposition barely attempts to dispute the Statement of Material Facts set forth by the Debtors. By CandelCoop's own admission in its Opposition and Statements in support, they filed the collection action willfully, after having every opportunity to corroborate the facts, and even after the fact of discharged was revealed to Defendant, before a judge in state court, by the Debtors.

11. Therefore, for all the foregoing reasons, Debtors pray summary judgment be entered against CandelCoop on the issue of liability for willful violation of the discharge injunction.

WHEREFORE, Plaintiffs pray that summary judgment on the issue of liability for willful violation of the discharge injunction be entered against CandelCoop.

RESPECTFULLY SUBMITTED, in Arecibo, Puerto Rico, this 10th day of July, 2012.

By: /s/ Edwin Matos Maldonado
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	09-06871-SEK13	NELSON VARGAS CORDERO and MARIJULIA RODRIGUEZ QUINONEZ	13	08/21/09	Debtor	06/10/10
	11-00151-ESL	VARGAS CORDERO et al v. COOPERATIVA DE AHORRO Y CREDITO NUESTRA SENORA DE	*Lead BK:* 98-10612-ESL13 NELSON VARGAS CORDERO and MARY J. RODRIGUEZ QUINONES	07/15/11	Plaintiff	N / A
	11-02484-ESL13	NELSON VARGAS CORDERO and MARIJULIA RODRIGUEZ QUINONES	13	03/25/11	Debtor	N / A
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